IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP NO. 874 OF 2004

Date of Decision: 3rd May, 2007.

Mohan Lal	Petitioner
Versus	
State of H.P. and others	Respondents

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The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]?

For the petitioner: Mr.Bimal Gupta, Advocate.

For the respondents: Mr.C.B.Singh, Dy. Advocate General.

Sanjay Karol, J.(Oral)

This judgment is being dictated in open Court in the presence of the learned counsel for the parties.

The respondent set up a primary school at Village Ghaton, Post Office Barag, Tehsil Sangrah, District Sirmaur some time in the year 1969. The said school was upgraded as Middle School in 1991. Vide Notification dated 26th February, 1999 issued by Commissioner cum Secretary (Education), Government of Himachal Pradesh ordered upgradation of said school from Middle to High level. This was of course subject to the accommodation being made available by

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Whether the reporters of Local Papers are allowed to see the Judgment?

the local residents. Various residents including the petitioner contributed by donating land and raising construction and providing accommodation for the school. In all 5 Bighas 5 Biswas of land was donated by petitioner himself and out of the contributions put in by the local residents, additional rooms were constructed and in all there are seven rooms, Verandah, two toilets, water tank, play ground and other facilities available in this school. The High school at Ghaton has been functioning since 21st May, 1999 without any complaint of any nature from any quarter. There is no complaint with regard to academic standard and results pertaining to the said school.

Civil Writ Petition No.232 of 1999 was filed before this Court, which pertained to the upgradation of Govt. Middle School, Barag, which was decided on 13th November, 2003 by this Court, with a direction that the matter with regard to upgradation be looked into by the Standing Committee constituted pursuant to the decision dated 7th July, 2003 passed by a Division Bench of this Court in CWP No.1528 of 2002, titled as Dara Singh vs. Commissioner cum Secretary (Education).

It appears that consideration of upgradation of the school at Barag, which incidentally falls within the same Panchayat where school Ghaton is

situated came up before the Committee set up by the Government, which resulted into the passing of the impugned Notification dated 9th August, 2004 whereby Government Middle School, Barag, was upgraded as high school and as a "consequence" thereof High School, Ghaton, was downgraded back to Middle School.

According to Shri Bimal Gupta, learned counsel for the petitioner, the challenge to the impugned Notification, inter alia, is on the ground that there is total non-application of mind in passing the impugned notification inasmuch as school at Ghaton had been upgraded after due consideration and deliberation and had been successfully functioning since 21st May, 1999. The challenge is also on the ground that even though there is no objection to the up-gradation of school at Barag but the down-gradation of the school at Ghaton cannot be as a consequence of the upgradation of the school at Barag.

The respondents have filed the reply justifying the stand taken by them. Shockingly the stand taken by the State is that school at Ghaton has been down-graded due to a dispute having arisen between two groups of people of the area. Mr. C.B.Singh, learned Deputy Advocate General, in response, argued that the decision to upgrade the school, Barag was taken on the asking of the people

and since two schools of the level of High Schools could not function in the same Panchayat area, therefore, the school had to be downgraded.

Having considered the rival contentions and on perusal of the material on record, I find favour with the submission made by the learned counsel for the petitioner. In the absence of any adverse material the Government ought not to have referred the down-gradation of the school at Ghaton to the constituted Committee. In any event, there is no material before the committee to have come to the decision for down-grading the school, Ghaton. The down-gradation of the school cannot be as a "consequence" of the up-gradation of another school in the area. The State has not disputed the fact that pursuant to Notification dated 26th February, 1999, infrastructure facilities were fully made available by the local residents and that the school has been made successfully functional with effect from 21st May, 1999. The stand of the respondents that the school has been down-graded due to dispute between two groups of people, is, in my view totally unsustainable in law. No doubt, public convenience is a matter to be considered in public interest, however, for gradation of school other various factors are equally important such as infrastructural facilities, availability and convenience of faculty

and students, geographical and topographical suitability and conditions etc., which factors are totally missing in the present case. Up-gradation of another school in itself cannot be a ground for down-grading of a school which is in existence since long. Admittedly, till date, the school is fully functional and successfully, since 21st May, 1999. Vide interim orders dated 11th November, 2004 passed in the present writ petition the school has been allowed to continue to function at Ghaton. There is no complaint of any nature either from the public or children. The academic atmosphere and result is stated to be quite congenial and conducive for the academic growth of children. There was no supervening circumstances, in existence, necessitating reviewing the earlier decision of the Government to upgrade the school at Ghaton. Each case has to be decided on its own merit.

There is no material placed on record to show that there had been overwhelming demand of the people to upgrade the school at Barag. The State policy may be not to have two schools of same level in the same Panchayat, however, upgradation of one cannot be at the cost of another, in the absence of any material and sound basis. Before recommending the up-gradation of school at Barag, the State Government has not considered the fact that school at Ghaton was

already functioning and having all infrastructure facilities.

No doubt, the scope of interference for judicial review in policy matters is limited, however, the extra ordinary power of this Court under Article 226 of the Constitution of India to interfere if the action of the State is arbitrary, irrational, illogical, is not restricted. In my view, the reasons given by the State are extremely extraneous and not germane to the factors on which the gradation of the schools is required to be considered. The action is totally arbitrary and unsustainable in law.

In this view of the matter, the writ petition is allowed and the Notification dated 9th August, 2004 is quashed. The school at Ghaton shall continue to function in terms of the Notification dated 26th February, 1999. If, however, at any point of time the respondent-State feels that there is reason to evaluate and re-grade the school, it shall be open to do so on its merit and in accordance with law.

3rd May, 2007 (Sanjay Karol), J.
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